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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

+ **RSA 123/2019 & CM APPL.28877/2019**

Between: -

IQBAL SINGH THROUGH LRS
S/O SH. UMRAO SINGH
(SINCE DECEASED THROUGH LRS)

A. SMT. KAMLESH
WIDOW OF LATE SH. IQBAL SINGH
(SINCE DECEASED THROUGH LRS)

B. SH. SURESH SINGH
S/O LATE SH. IQBAL SINGH
(SINCE DECEASED THROUGH LRS)

I. SMT. SARVESH
WIDOW OF LATE SH. SURESH SINGH

II. RAHUL SINGH
S/O LATE SH. SURESH SINGH

ALL R/O HOUSE NO. 6/49,
VISHWAS NAGAR, SHAHDARA, DELHI-110032

III. MS. PRIYANKA CHAUDHARY KAUSHIK
W/O SH. AMIT KAUSHIK
D/O LATE SH. SURESH SINGH
R/O P-39, GALI NO.3
SHANKAR NAGAR EXTENSION,
DELHI- 110051



IV. MS. YAMINI CHAUDHARY
W/O SH. SUMIT MEHROTRA
D/O LATE SH. SURESH SINGH
R/O 108-D, POCKET-E
DILSHAD GARDEN, DELHI- 110095

C. SMT. BIMLESH
WIDOW OF LATE SH. BALRAJ SINGH
(PREDECEASED SON OF LATE SH. IQBAL SINGH)

I. SH. SACHIN
GRANDSON OF LATE SH. IQBAL SINGH

II. SH. NITIN
GRANDSON OF LATE SH. IQBAL SINGH

III. MS. MEENAKSHI
GRANDDAUGHTER OF LATE SH. IQBAL SINGH

IV. SMT. ANITA
GRANDDAUGHTER OF LATE SH. IQBAL SINGH

ALL R/O HOUSE NO. 6/49,
VISHWAS NAGAR, SHAHDARA, DELHI-110032

D. SMT. RAJBALA
W/O SH. RAJENDER SINGH
DAUGHTER OF LATE SH. IQBAL SINGH
R/O VILLAGE JALALPUR
POST OFFICE MURADNAGAR
DISTT. GHAZIABAD, U.P.

E. SMT. SAROJ BALA
W/O SH. JAGAT SINGH
DAUGHTER OF LATE SH. IQBAL SINGH
R/O WZ-305, PALAM VILLAGE, DELHI



F. SMT. SARITA BALA
W/O SH. ASHISH KUMAR
DAUGHTER OF LATE SH. IQBAL SINGH
R/O VILLAGE & P.O.: SHANGI
DISTT. ROHTAK, HARYANA

....APPELLANTS

(Through: Mr. Ch. Rabindra Singh, Ms. Ekta Singh, Mr. Asif Ali, Ms. Preeti Garg, Advocates.)

AND

HARI KISHAN LAL THROUGH LRS
S/O SH. KANSHI NATH ARORA
(SINCE DECEASED THROUGH LRS)

A. SMT. SHAKUNTALA DEVI
W/O LATE SH. HARI KISHAN LAL

B. SH. GOPAL ARORA
S/O LATE SH. HARI KISHAN LAL

C. SH. ASHOK ARORA
S/O LATE SH. HARI KISHAN LAL

D. SH. SUBHASH ARORA
S/O LATE SH. HARI KISHAN LAL

ALL R/O 727, LAKHPAT SINGH LANE
BEGUM BRIDGE, MEERUT, UPRESPONDENT

(Through: Mr. Deepak Khosla and Mr. Anuroop P. S., Advocate.)

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Reserved on: 29.11.2024
Pronounced on: 28.01.2025

JUDGMENT

Signature Not Verified
Digitally Signed By:PRIYA
Signing Date: 30.01.2025
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By: PURUSHAINDRA
KUMAR KAURAV



The instant appeal has impugned the judgment and decree dated 23.03.2019, passed in RCA No.38/2019, dismissing the appeal preferred by the appellants/plaintiffs against the judgment and decree dated 30.04.2007 in the civil suit bearing no. CA No.22/07, whereby, the civil suit preferred by the appellants/plaintiffs seeking declaration, possession, and injunction, was dismissed by the Trial Court.

2. The dispute in the present case essentially pertains to a *lis* spanning nearly five decades, originating from a civil suit for permanent injunction which had been instituted on 30.11.1974, by *Iqbal Singh*, the original plaintiff. The aforementioned civil suit was earlier decreed *vide* judgment and decree dated 30.01.1978 and being aggrieved by the said decree, the original defendant preferred an appeal. During the pendency of the appellate proceedings, the original plaintiff withdrew the civil suit, citing that it was instituted due to an apprehension of being dispossessed from the land in question by the use of force. Subsequently, on 13.03.1981, the original plaintiff filed the instant suit alleging that the respondents/defendants, in collusion with law enforcement authorities, intimidated and issued threats of his dispossession.

3. During the pendency of the suit, proceedings under Section 145 of the Code of Criminal Procedure, 1973 (Cr.P.C.) were initiated, resulting in the attachment of the suit property *vide* order dated 25.04.1981. Subsequently, by order dated 23.06.1985, the Sub-Divisional Magistrate (SDM) directed that the possession of the suit property be delivered to the respondents/defendants, and accordingly, the attachment order was withdrawn. A revision petition was filed before the High Court challenging



the said order which was also dismissed, and a Special Leave Petition (SLP) preferred before the Supreme Court was withdrawn, with a liberty to approach the Civil Court for the appointment of a receiver concerning the suit property.

4. The Trial Court framed the following issues:

" 1. Whether plaintiff is the owner in possession of the property in suit, if so, its effect?OPP

2. Whether the suit is bad for non joinder of necessary parties as alleged in the WS?OPD

3. Whether the suit is barred under Order 23 Rule 1(4) CPC?OPD

4. Whether the appellant is estopped by his act conduct and acquiescence from filing the present suit?OPP

5. Whether the appellant is entitled to the injunction as claimed?OPP

6. Whether the respondent's are entitled to the special costs?OPD

7. Relief.

Following additional issues were framed on 13.05.1988 after amendment to the suit:-

7. Whether the suit is properly valued and sufficiently stamped for purposes of Court fee and jurisdiction?

8. Whether the suit is within limitation?

9. Whether the suit is barred by res judicata?

10. Whether the suit is barred under Order 2 Rule 2 CPC?"

5. Thereafter, *vide* judgment and decree dated 30.04.2007, the Trial Court dismissed the suit holding that the present suit was barred under the provisions of Order XXIII Rule 1(4) of the Code of Civil Procedure, 1908 as well as the principle of *res judicata*. The Trial Court further observed that the suit suffered from non-joinder of necessary parties due to the non-impleadment of the wife of the defendant, who was shown as the owner of the property in question based on ownership documents produced and relied upon by the respondent. Additionally, the Trial Court held that the suit was



barred by limitation.

6. Thereafter, the appellant/plaintiffs preferred an appeal, which was decided in their favour on 04.05.2009, resulting in decreeing the civil suit. The first Appellate Court found that the original plaintiff consistently maintained that neither he nor his father had ever sold the suit property to anyone.

7. The judgment and decree dated 04.05.2009 were subsequently challenged by the respondents/defendants through RSA No.66/2009 before this Court. The said RSA was decided on 30.05.2011 while framing the following additional issue, and remitting it back to the first Appellate Court for adjudication on it:-

"1. Whether the sale of the property i.e. measuring 780 square yards in property bearing No. 50 to 53 in Abadi of Vishwas Nagar, Delhi comprised in khasra Nos. 807 & 806 situated in revenue estate of Mauja Chandawali alias Shahdar, Delhi was effected on 21.10.1937 and if so its effect."

8. Thereafter, *vide* the impugned judgment and decree, the first Appellate Court decided the aforementioned issue against the appellant/plaintiffs and in favour of the respondents/defendants while dismissing the appeal. The appellants/plaintiffs are, therefore, before this Court in the instant appeal.

9. *Mr. Ch. Rabindra Singh*, learned counsel appearing for appellants/plaintiffs submits that the sale deed dated 21.10.1937, on which the entire case of respondents/defendants is based, was not properly proved as the original sale deed was never produced in Court and the first Appellate Court failed to duly appreciate that the copy of the alleged Sale Deed dated 21.10.1937 did not bear the signatures or thumb impression of *Sh. Umrao*



Singh. He further submits that since the burden of proving the alleged sale deed dated 21.10.1937 rested squarely upon the respondents/defendants, it was incumbent upon the respondents/defendants to produce the original sale deed as primary evidence and thereafter, to prove it in accordance with the applicable legal principles.

10. Moreover, according to learned counsel, the sale deed dated 21.10.1937 did not find any whisper in the pleadings of the respondents/defendants throughout the proceedings before the Trial Court, first Appellate Court, and the second Appellate Court.

11. Furthermore, learned Counsel appearing for the appellants/plaintiffs submits that to rely on secondary evidence, it was *sine qua non* for respondents/defendants to demonstrate, through satisfactory evidence, the non-production of the primary evidence. According to him, the essential procedural requirement for the production of secondary evidence in the form of a registration record of the alleged sale deed was not adhered to.

12. Learned counsel appearing for the appellants/plaintiffs proposed the following substantial questions of law:

“(i)Whether the findings returned by the appellate court on the issue framed by this Hon'ble court vide order dated 30.05.2011 in RSA 66/09 are perverse in law and on facts.

(ii)Whether the execution of the alleged Sale Deed dated 21.10.1937 could be presumed in the absence of original document coming forth and the alleged copy so produced not bearing signatures and thumb impression of the vendor and witnesses

(iii)Whether the execution of the alleged Sale Deed dated 21.10.1937 can be proved by mere production of alleged registration record and the statutory presumption u/s 90 of the Indian Evidence Act be invoked on that basis

(iv) Whether the settled physical possession of the appellant (now his LRs) over the suit land/property can be deprived of on account of bare



finding recorded on the issue in view of the alleged Sale Deed dated 21.10.1937 in absence of any claim/counterclaim by the respondents/defendants.

(v) Whether the appellants/plaintiffs has not perfected title by way of adverse possession qua the suit land property due to retaining physical possession notwithstanding the alleged sale deed dated 21.10.1937 (through the execution of the same is denied)

(vi) Whether the alleged right, title or interest of the respondents/defendants extinguishes for not claiming possession of the suit property within the prescribed period?"

13. *Per Contra, Mr. Deepak Khosla*, learned counsel appearing on behalf of respondents/defendants vehemently opposes the aforesaid submissions and avers that the findings of the first Appellate Court are legally sound, supported by evidence, and free from any material error. Moreover, he asserted that the sale deed was admissible under Section 90 of the Indian Evidence Act, 1872, which provides a presumption of genuineness for documents that are more than 30 years old. He also submits that the certified copy of the aforenoted sale deed, supported by the revenue records and mutations, established the valid transfer of ownership from *Umrao Singh* to *Sh Pran Nath Sarvaria*, predecessor-in-interest of the respondents/defendants.

14. Learned counsel, therefore, asserts that no substantial question of law arises for consideration in the instant appeal, and the validity of the sale deed cannot be challenged on legal grounds as the same has already attained finality. He also avers that any alternative plea of adverse possession or claim of title in suit property through the predecessor-in-interest, cannot raise any substantial question of law warranting consideration in the instant appeal.

15. I have heard learned counsel appearing for the parties and have



perused the record.

16. A perusal of the Trial Court judgment dated 30.04.2007, would indicate that the Trial Court took note of the earlier suit and the order passed thereto by the Court of Sub judge on 30.01.1978. The Trial Court observed that despite there being an adverse finding against the original plaintiff *qua* title and ownership of the suit property, the same was not challenged by the him. The Trial Court dismissed the suit as being barred under Section 11 of the CPC which envisages the doctrine of *res judicata*. The Trial Court also opined that the wife of the original defendant was a necessary party whom the appellants/plaintiffs did not implead even though the pleading and documents in the instant suit and the earlier round of litigation indicate that the possession and ownership of land was with the wife of the original defendant. The Trial Court dismissed the suit filed by the appellants/plaintiffs with costs and rendered a finding to the effect that the parties were litigating for a protracted period of time due to the appellants/plaintiffs using dilatory tactics. The relevant findings rendered by the Trial Court read as under:-

“23. On perusal of record it is revealed that despite a finding against the plaintiff in regard to ownership the plaintiff never challenged the said order. However, an appeal was filed by the defendant against the said order. However, the plaintiff in appeal sought to withdraw his suit by making a statement that he no longer required protection of injunction as they were in position to protect their possession. The plaintiff in the present plaint has been asserting that the suit in appeal was withdrawn by him with liberty to file a fresh suit on the same cause of action. However, on perusal of the certified copy of the order dtd.13.1.1981 passed by the appellate court of Sh. H.K.S. Malik, the Ld. Addl. Distt. Judge, appeal filed by the defendant was dismissed being infructuous in view of the statement of the plaintiff. No liberty as such was granted to the plaintiff as claimed.

Hence, it is clear that the findings in judgment dated 30.1.1978 remaining unchallenged has already acquired finality.



24. *However, in the present suit also the plaintiff has based his claim on the similar pleadings. In my considered view, the suit of the plaintiff is clearly barred by the principles of resjudicata and also by provisions of order 23 Rule 1 (4) CPC*

26. *The defendant has denied the ownership of the plaintiffs in both the suits. The defendant has rather asserted that the wife of the defendant Smt. Shakuntala Devi was the owner of the suit plots. On these averments the issue regarding ownership was framed in the earlier suit also.*

27. *As already observed that the Ld. Appellate Court of Sh. H.K.S. Malik as not granted any liberty to the plaintiff to file another suit on the same cause of action. The suit of the plaintiff is hence hit by principles of resjudicata and the suit is clearly barred by section 11 CPC and the plaintiff cannot be allowed to agitate the issue of ownership which already stands adjudicated upon in the previous suit by a competent court.*

29. *It is clear that if the plaintiff abandons his suit or part of claim without permission to institute a fresh suit in respect of the subject matter of such suit or part of the claim he is precluded from instituting any fresh suit in respect of such subject matter on such part of the claim.*

30. *In the present matter also no permission was granted to the plaintiff to institute a fresh suit in respect of the same subject matter of the previous suit. In his statement seeking withdrawal in the previous suit he has not mentioned even a word in regard to his claim of ownership of the suit property despite their being a clear finding against him.*

31. *Even otherwise defendants have placed on record number of documents i.e. sale deeds, agreement to sell, revenue records in regard to suit land. No relief qua the existing documents of title in favour of the defendants has been sought by the plaintiff despite that the said documents were well within the knowledge of plaintiff as the same had been referred by the defendant in their written statement filed in the earlier suit.*

32. *The suit of the plaintiff is hence also barred by the provisions of order 23 CPC. In view of my above findings both the issue no.3 and issue no.9 are decided against the plaintiff and in favour of the defendant. Accordingly, the issue no.1 also stands disposed off against the plaintiff."*

17. The aforementioned judgment was assailed by way of an appeal preferred by the appellants/plaintiffs and the first Appellate Court *vide* judgment dated 04.05.2009 reversed the findings rendered by the Trial Court and held that it had incorrectly relied on the findings of an earlier withdrawn suit. It was



also held that the appellant/plaintiffs' possession of the disputed property was supported by credible testimonies and land records, while the claims by the respondents/defendants were unsubstantiated.

18. Thereafter, the case was remanded back to the first Appellate Court by this Court in a second appeal as noted earlier.

19. The first Appellate Court, while reappreciating the evidence after remittal has held that the execution and registration of the sale deed dated 21.10.1937, registered on 27.10.1937, were duly proved through the production of the original registration record by the Department of Archives. The certified copy of the sale deed, Ex. DW1/1, along with the attached site plan, Ex. DW1/2 and Ex. DW1/2A, clearly indicated the inclusion of plots 49 to 60, totalling 2195 sq. yds., as part of Khasra No. 807. The Court noted that the sale deed reflected proper execution, registration, and payment of stamp duty, thereby serving the purpose of public notice regarding the transfer of land. It was further established that the plots, including the disputed plots 50 to 53, were transferred either in full or partially as detailed in the site plan, which was an integral part of the registration record.

20. The Court held that the objections raised regarding the validity of the sale deed lacked merit as the original registration record corroborated its execution and registration. The Court rejected the argument that the presumption of genuineness could not apply to the certified copy, emphasizing that the original registration record had been duly summoned and verified. Furthermore, the Court observed that the undivided ownership of the land by *Umrao Singh* and *Bharat Singh* allowed the transfer of the plots within their respective shares. The subsequent mutations and sales, including the transactions relating to plots 50 to 53, were upheld as valid,



with the site plan confirming the extent of the transfer. The Court recorded a finding to the effect that the transfer of plot numbers 50 to 53 through the sale deed dated 21.10.1937 completely divested *Umrao Singh* of any right, title, or interest in the land covered by the sale deed, and consequently, the ownership claims of his lineal descendants, including the original plaintiff and the appellants/plaintiffs herein, lack merit and cannot be sustained.

21. The Court concluded that the sale deed dated 21.10.1937 validly transferred the land specified in the deed to *Sh. Pran Nath Sarvaria*. Subsequently, he transferred a portion of this land, specifically plots 50 to 54, to *Sh. Mool Singh Arora* through a sale deed dated 08.02.1938. Thereafter, *Smt Shakuntala Arora*, the widow of *Sh. Mool Singh Arora*, via two sale deeds dated 04.12.1963 and an agreement to sell dated 12.01.1983, sold the plots in question to *Smt. Shakuntala Devi*, the wife of original defendant namely, *Sh. Hari Kishan Lal*, predecessor of respondents/defendants herein.

22. It is seen that since the other issues which were decided had a direct bearing on the issue framed by this Court while remitting the matter to the Appellate Court, the first Appellate Court found that the additional issue framed by the High Court was in favour of the respondents/defendants and, therefore, the decision on other earlier decided issues stood merged and, the suit filed by the appellants/plaintiffs came to be dismissed. The findings rendered by the first Appellate Court read as under:-

“It is accordingly held that appellant is not the owner of suit property no. 50 to 53 and can have no right, title or interest In the same. In view of finding on the said additional issue, no claim can be raised by the appellant. In respect of plot no. 51 to 53 Shakuntala Devi wife of respondent will be owner by virtue of sale deed and no injunction can be sought against her family members for seeking



possession of those plots or for seeking injunction in respect of those plots. Even if objection is raised as to the imperfect title or no title in respect of plot no, 50 as there is agreement to sell only, protection of Section 53-A of Transfer of Property Act will be available. The agreement to sell though is not a document of title but is indicative of right and interest of the purchaser i.e. Shakauntala Devi wife of defendant through Shakuntala Devi widow of Mool Singh and it is being dated 12.01.1973 i.e. prior to the amendment in the year 2002 in the Registration act and the Transfer of Property Act will be admissible in evidence for the protection of part performance u/s 53A of Transfer of Property Act and the possession of purchaser in the plot no. 50 cannot be said to be of a trespasser, in any case appellant having no right, title or interest in the suit plots no, 50 to 53, any injunction or possession for the same can not be granted. Any mutation entry at a later stage in the aforesaid background or any Ration Card pertaining to plot no, 50 in favour of appellant or his family members for the same reason of having no title cannot create any right or interest in the plot in question.

As the file was remanded by Hon'ble High Court for returning finding only on the issue framed by the Hon'ble High Court, there is no occasion for touching upon any other issue except to the extent finding on the issue framed by Hon'ble High Court has bearing in Its effect on any other issue

As finding on the issue framed by the Hon'ble High Court given above has its effect and bearing upon Issue no. 01 and relief to be granted, same may be taken as modified by virtue of the effect of the finding on the issue framed by Hon'ble High Court.

Counsel for the parties had consented for framing of this issue knowing fully well that It Is this Issue which will be determinative of the title claim of the respective parties on the plot no. 50-53. This will determine whether Umrao Singh transferred these plots to Sh. P. N. Sarvaria continued to retain these plots as it is through the sale deed dated 21.10.1937 registered on 27,10.1937 that P. N. Sarvaria had claimed the land and plots of which plot no. 50 to 53 are part and It is on the basis of the said sale deed that Mool Singh got his right In plot no. 50 to 53 by way of sale deed and from the widow of Mool Singh, wife of defendant got her title, right and interest in plot no. 50 to 53 by way of sale deeds and agreement to sell. Suit of the appellant is accordingly dismissed."

23. On the edifice of the aforesaid delineation of the impugned judgment and submission made by learned counsel for the parties, it is seen that the respondents/defendants, *albeit* did not produce the original sale deed, yet the



first Appellate Court has correctly found that the execution and registration of the sale deed dated 21.10.1937 were duly proved through the production of the original registration records in Additional Book No. 1, Volume No. 1931, and the certified copy was also exhibited as Ex. DW1/1.

24. The thrust of the challenge preferred by the appellants/plaintiffs against the impugned judgment rests upon the averment that the sale deed dated 21.10.1937 could not be taken as proved due to the non-production of the original sale deed. It is noted that the aforesaid objection was also raised before the first Appellate Court and the same was dismissed in light of the summons to the Department of Archives who presented the original registration records.

25. Moreover, the objection regarding the lack of presumption of genuineness for certified copies of documents older than 30 years was also raised before the first Appellate Court and the same was dismissed in view of Section 90 of the Indian Evidence Act, 1872.

26. More importantly, it is seen by the findings of fact rendered by the first Appellate Court that the sale deed dated 21.10.1937, along with the site plan (*Ex. DW1/2 and Ex. DW1/2A, respectively*), clearly established the transfer of plot nos. 49 to 55 and 56 to 60, as part of Khasra No. 807, to *Sh. Pran Nath Sarvaria* who was the predecessor in the interest of the respondents/defendants.

27. Thereafter, the Court dismissed the appellants/plaintiffs claims, confirming that the sale deed dated 21.10.1937 validly transferred the land, including plot no. 50 to 53, to *Sh. Pran Nath Sarvaria*, and subsequently, through further transactions, to *Smt. Shakuntala Devi*, wife of original defendant represented through legal representatives who are



respondents/defendants herein.

28. Therefore, in the instant case, it is seen that the first Appellate Court has given a categorical finding of fact with respect to the right, title, and interest of the appellants/plaintiffs in the suit property. It also has been correctly held that with respect to Plot Nos. 51 to 53, *Shakuntala Devi*, wife of original defendant, is the rightful owner by virtue of the sale deed, and no injunction could be issued against her or her family members regarding possession of these plots or restraining their use thereof.

29. With respect to the proposed question of law based on a claim of adverse possession by the appellants/plaintiffs, it is seen that no evidence to that effect has been led by them before the Courts below, nor has any Court given any finding to that aspect.

30. Be that as it may, since the instant appeal only raises questions of fact and the same not being amenable to Section 100 of CPC, the appeal is bound to fail.

31. It is trite law that in second appellate proceedings, the Court refrains from interfering with the impugned judgment solely on the basis of erroneous findings of fact, irrespective of how manifest or egregious such errors may appear. It is imperative to underscore that the 1976 amendment to Section 100 of the Code of Civil Procedure (CPC) has significantly circumscribed the powers of the second appellate Court. Therefore, the ambit of a second appeal under Section 100 CPC is now strictly confined to matters where such a question of law is not only present but is also demonstrably substantial in nature. Post-amendment, the maintainability of a second appeal is contingent upon the existence of a substantial question of law.



32. In view of the aforesaid, no proposed substantial question of law arises in the instant case.

33. Accordingly, the instant appeal along with the pending application stands dismissed. No order as to cost.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

28, JANUARY, 2025

p/mjo